

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MELVIN SHELTON,

Plaintiff,

v.

Case No. 05-C-0620

WISCONSIN DEPT. OF
HEALTH & FAMILY SERVICES,

Defendant.

ORDER

On June 8, 2005, Melvin Shelton filed this petition pursuant to 28 U.S.C. § 2254. It appears that Shelton is contending that his 1987 conviction in the Milwaukee County Circuit Court for the sexual assault of a five-year-old child was imposed in violation of the Constitution. It does not appear, however, that petitioner is currently incarcerated or otherwise confined.

I must give the case prompt initial consideration pursuant to Rule 4 of the Rules Governing § 2254 Cases, which reads:

If it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the petitioner to be notified. Otherwise the judge shall order the respondent to file an answer.

Rule 4, Rules Governing § 2254 Cases. During my initial review of habeas petitions, I look to see whether the petitioner has set forth cognizable constitutional or federal law claims and exhausted available state remedies.

While the petition has many defects, the most obvious is that it is the fifth federal habeas petition Shelton has filed. *See Shelton v. McCaughtry*, Case No. 04-0174 (E.D. Wis. Feb. 17, 2005) (dismissed); *Shelton v. Smith*, Case No. 97-0356 (E.D. Wis. Aug. 31, 1998) (dismissed); *Shelton v. McCaughtry*, Case No. 93-C-1464 (E.D. Wis. Jan. 3, 1994) (dismissed); *Shelton v. Doyle*, Case No. 92-C-0230 (E.D. Wis. July 16, 1992) (dismissed). 28 U.S.C. § 2244(b) forbids second or successive habeas petitions, even as to claims not presented in prior petitions, unless the petitioner moves for, and is granted, an order from the Seventh Circuit permitting this court to consider the petition.¹ 28 U.S.C. § 2244(b)(3). Petitioner provides this court with no such order.

IT IS THEREFORE ORDERED that this petition is summarily dismissed pursuant to Rule 4 of the Rules Governing § 2254 Cases. The clerk of court shall enter judgment accordingly.

Dated this 17th day of June, 2005.

s/ William C. Griesbach
William C. Griesbach
United States District Judge

¹Second or successive petitions presenting claims identical to those in earlier petitions are absolutely barred. 28 U.S.C. § 2244(b)(1).